

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA J. FRIED and MARK FRIED; :
ALTITUDE PARTNERS, LLC; RICHARD :
D. MALTZMAN, AS TRUSTEE FOR THE :
RICHARD D. & CHARLENE :
MALTZMAN FAMILY TRUST U/A/D :
3/23/88; JEFFOREED PARTNERS, L.P.; :
JEFFOREED MANAGEMENT :
COMPANY, INC.; and ZELFAM, LLC, on :
behalf of limited partners listed on Annex :
A. :

Plaintiffs,

- vs -

LEHMAN BROTHERS REAL ESTATE :
ASSOCIATES III, L.P.; LEHMAN :
BROTHERS PRIVATE EQUITY :
ADVISORS, LLC; REAL ESTATE :
PRIVATE EQUITY, INC.; MARK A. :
WALSH; MARK H. NEWMAN; BRETT :
BOSSUNG; MICHAEL J. ODRICH; :
CHRISTOPHER M. O'MEARA; :
RICHARD S. FULD, JR.; JOSEPH M. :
GREGORY; ERIN CALLAN; IAN :
LOWITT; THOMAS RUSSO; AND DOES :
1 through 50, :

Defendants.

Civ. No. 09-CIV-9100 (BSJ)

ECF CASE

AFFIDAVIT OF MARK B. ROSEN

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss:

Mark B. Rosen, deposes and says:

1. I am an attorney admitted to practice in this Court, and an associate with the law firm of Weil, Gotshal & Manges LLP, counsel for defendants Lehman Brothers Real Estate Associates III, L.P., Lehman Brothers Private Equity Advisors, LLC, and Real Estate Private Equity, Inc., in the above-captioned action.

2. On Monday January 4, 2010, I had telephone conversations with two employees of the Wall Street Journal (“WSJ”). Specifically, I separately spoke to Courtney Becker and Erin Ostenson, both of whom informed me that they work in the division of WSJ’s advertising department that coordinates publication of legal notices. I asked Ms. Becker and Ms. Ostenson, in sum and substance, whether WSJ had published a notice to putative class members in connection with this action, and whether WSJ had received the press releases purportedly sent by the Ad Hoc Committee¹ (“Plaintiffs”) or its counsel to WSJ on November 20, 2009 and December 7, 2009, as claimed in Plaintiffs’ Memorandum of Law Supporting Motion to Approve Lead Plaintiffs and Selection of Lead Counsel (the “Motion”) and the Declaration of Robert Ted Parker Supporting the Motion.

3. I provided Ms. Becker with the names of the parties to this action and the dates on which Plaintiffs claim to have sent WSJ press releases concerning this action. Ms. Becker informed me that she could not locate any records, including faxes or emails, indicating that WSJ had published a legal notice regarding this action. Ms. Becker also explained that WSJ provides each party on whose behalf WSJ publishes a legal notice with an Affidavit of Publication. Ms. Becker also noted that WSJ published only four class action legal notices in December 2009, none of which related to this action.


4. Ms. Ostenson explained that she is generally aware of most, if not all, legal notices published by WSJ. I provided Ms. Ostenson with the names of the parties to this action, the dates on which Plaintiffs claim to have sent WSJ press releases

¹ As defined in paragraph 16 of the Complaint for Rescission or Damages, Declaration and Injunction, filed on October 30, 2009, and on page 1 of the Memorandum of Law Supporting Motion to Approve Lead Plaintiffs and Selection of Counsel, filed on December 31, 2009.

concerning this action, and, additionally, the names of Plaintiffs' counsel. Ms. Ostenson could not locate any records, including faxes or emails, relating to publication of a legal notice concerning this action, or a request for publication by the named plaintiffs in this action or their counsel, Messrs. Russell and Parker. Ms. Ostenson also informed me that she reviewed all email messages in the inbox of her work email account, dated November 20, 2009 through the date of our conversation (January 4, 2010), and could not find any email messages referencing this action, or any email messages at all sent by Plaintiffs or their counsel.


Mark B. Rosen

Sworn to before me on this day,
January 8, 2010


Notary Public

ETHNA CLARKE SERKANIC
Notary Public, State of New York
No. 015E4956123
Qualified in New York County
Commission Expires March 22 2012